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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

PACIFIC/MONTANA, LTD.,

Plaintiff and Respondent,

v.

DAVID C. PIERSON et al., Individually
and as Trustees, etc.,

Defendants and Appellants.

2d Civil No. B201610
(Super. Ct. No. CV050374)
(San Luis Obispo County)

David C. Pierson and Pamela J. Pierson, individually and as trustees of the Pierson Family Trust, appeal from the judgment in favor of respondent Pacific/Montana, Ltd., on its quiet title action entered after jury trial, and from the denial of their motions to set aside the judgment or grant a new trial. The jury found that respondent acquired property by adverse possession. The court entered judgment for respondent and dismissed appellants' cross-complaint. Appellants challenge the sufficiency of the evidence, and raise evidentiary, instructional and other errors. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In 2000, William Bankerd purchased a triangle-shaped 85-acre ranch on 7775 O'Donovan Road in Creston, California, from Cora Dietrich. The property was first acquired by the Dietrich family in 1888, and is still called the Old Dietrich Place.

In 2001, Bankerd deeded his interest in the Old Dietrich Place to respondent Pacific/Montana Ltd., a Texas limited partnership, of which he is the general partner.

This case involves a 40-foot strip of property that is contained within the perimeter fences of the Old Dietrich Place. The legal description of the Old Dietrich Place consistently provided the following language excepting the strip: "Excepting from the above described premises a strip of land 40 feet wide throughout and running along the two courses first above described; that is to say, a strip 40 feet wide off the northeasterly side of said tract is excepted from the operation of this conveyance."

The owners of the Old Dietrich Place used the strip for decades. The Old Dietrich Place is south of, and adjacent to, the Lindquist property at 7440 O'Donovan Road. The northern perimeter fence of the Old Dietrich Place ("northern perimeter fence") separates it from the Lindquist property. The strip and the northern perimeter fence are the same length and the strip generally runs along and within the northern perimeter fence.

An 1800-acre property called Bubbling Springs Ranch lies northwest of the Old Dietrich Place. The entire "western" side or boundary of the Old Dietrich Place is adjacent to Bubbling Springs Ranch. The fence that separates the Old Dietrich Place and Bubbling Springs Ranch is roughly perpendicular to the Old Dietrich Place northern perimeter fence.

The Lindquist Property and the Old Dietrich Place, including the strip, sit between O'Donovan Road and Bubbling Springs Ranch, which has no access to O'Donovan Road. Appellants acquired Bubbling Springs Ranch in 2001 from Bubbling Springs, Inc.

The San Luis Obispo County assessor's office never separately assessed the strip or assigned it an assessor's parcel number. For at least 50 years, the assessor's office has included the strip as part of the Old Dietrich Place. Respondent and prior owners of the Old Dietrich Place have paid all of the property taxes on the strip since the 1980/1981 tax year.

Appellants called Kevin Riot, the manager and vice-president of First American Title in San Luis Obispo, to testify regarding the chain of title of the strip. Until 1943, the owners of Bubbling Springs Ranch also owned the strip. In 1943, Joseph C. Thurman conveyed the Bubbling Springs Ranch property but retained his interest in the strip. Thurman died in 1968.

The Thurman estate probate documents list real property in Los Angeles County but do not list the strip or any other real property in San Luis Obispo County. On November 2, 2004, the administrators of the Thurman Trust executed a "correction deed" that purported to transfer the strip to appellants.

The Old Dietrich Place receives favorable tax treatment under the Williamson Act. (Gov. Code, § 51200 et seq.) The trial court denied appellants' request to introduce a resolution and contract concerning the Williamson Act and the Old Dietrich Place ("Williamson Act evidence" and "Williamson Act contract").

The jury found that for at least five years prior to April 21, 2005, the strip was assessed to the Old Dietrich Place and that respondent and its prior owners paid all taxes levied on the strip and occupied it continuously and in a manner hostile to its true owner and under a claim of right. The jury further found that respondent established all elements of adverse possession as to the strip. The court ordered that title to the strip vested in respondent, and entered judgment in the quiet title action, as well as the cross-complaint, in favor of respondent and against appellants. The court denied appellants' subsequent motion for a new trial and/or a judgment notwithstanding the verdict.

DISCUSSION

Sufficiency of the Evidence

Some of appellants' claims challenge the sufficiency of the evidence to support the judgment. In reviewing a sufficiency of the evidence claim, we must determine "whether there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion reached by the jury. When two or more inferences can be reasonably deduced from the facts," we cannot substitute our deductions for those of the fact finder. (*Crawford v. Southern Pac. Co.* (1935) 3 Cal.2d 427, 429.)

"To establish title by adverse possession, the claimant must establish five elements in connection with his occupancy of the property. [Citations.] (1) Possession must be by actual occupation under such circumstances as to constitute reasonable notice to the owner. [Citations.] (2) Possession must be hostile to the owner's title. [Citations.] (3) The holder must claim the property as his own, either under color of title, or claim of right. [Citations.] (4) Possession must be continuous and uninterrupted for five years. [Citations.] (5) The possessor must pay all of the taxes levied and assessed upon the property during the period. [Citations.] Unless each one of these elements is established by the evidence, the plaintiff has not acquired title by adverse possession.' [Citations.]" (*Newman v. Cornelius* (1970) 3 Cal.App.3d 279, 288-289.)

Here, appellants challenge the sufficiency of the evidence that respondent paid the requisite taxes on the strip. They argue, for example, that the fences were not considered in the assessments. While the Old Dietrich Place perimeter fences were not assessed *as improvements*, they were considered in assessing the strip and the other property enclosed by those fences. There is substantial evidence that respondent and prior owners of the Old Dietrich Place have paid all of the property taxes on the strip from at least the 1980/1981 tax year to date.

Appellants also argue that there is no sufficient evidence that respondent (and its predecessors) occupied the strip in a manner hostile to its true owner. We disagree. Respondent and its predecessors in interest entered the Old Dietrich Place, mistakenly believing that they were its owners. Numerous witnesses testified that for decades Old Dietrich Place fences have enclosed the strip, and owners of the Old Dietrich Place have used the strip as part of their property. (See *Newman v. Cornelius, supra*, 3 Cal.App.3d at pp. 288-289.)

Appellants further claim that it is undisputed that they are the record owners of the strip. Appellants cite the judgment in claiming such record ownership and note that "no other party is named in [respondent's] complaint." This claim is not persuasive. There is substantial evidence that respondent acquired title to the Old Dietrich Place by adverse possession.

Evidentiary Issues

Appellants argue that the court abused its discretion by excluding evidence relating to the Williamson Act. (See Gov. Code, § 51200 et seq.) We disagree.

In this case, the relevancy of the Williamson Act evidence involved questions of law, including statutory and contractual interpretation issues. We therefore apply an independent standard of review to the court's relevancy ruling. (See *SFPP, L.P. v. Burlington Northern & Santa Fe Ry. Co.* (2004) 121 Cal.App.4th 452, 461-462, fn. 4.)

The Old Dietrich Place is subject to a land conservation contract pursuant to the Williamson Act. (See Gov. Code, § 51200 et seq.) The Williamson Act contract incorporates the legal description of the Old Dietrich Place, which excepts the strip. The court excluded the Williamson Act evidence because it had no "relevance to the case." The court also noted that the legal description in the excluded Williamson Act contract was "the same [legal] description" contained in other admitted evidence.

The court correctly concluded that Williamson Act evidence was irrelevant. The Williamson Act defined the rate of tax of the affected property. However, neither that Act nor the proffered contract precluded respondent (or prior owners of the Old Dietrich Place) from paying taxes on the strip; nor did the Act or the contract render it legally impossible for them to do so. Similarly, the Williamson Act and the proffered contract did not prevent the assessor from treating the strip as part of the Old Dietrich Place.

Even if the Williamson Act contract had been relevant, the court properly exercised its discretion in excluding it as cumulative. (See Evid. Code, § 352.) It contained the same legal description that was in evidence.

Agreed Upon Boundary Claim

Appellants also argue that the agreed upon boundary doctrine defeats respondent's adverse possession claim. We disagree. The agreed upon boundary doctrine applies to disputes between coterminous owners and has no application to this

case. (See *Findley v. Yuba County Water District* (1979) 99 Cal.App.3d 691, 699.) Appellants and respondent are not coterminous owners with respect to the strip.

Instructional Issues and Related Claims

Appellants claim that the court gave the jury instructions that were one-sided, improperly refused to instruct the jury with their special instructions, and gave the jury other instructions that misstated the law. We reject these claims also.

Appellants challenge the court's failure to give an instruction regarding an agreed upon common boundary between the Old Dietrich Place and the Lindquist property. The court correctly refused to give that instruction because the agreed upon boundary doctrine does not apply to this case.

Appellants cite *Bryant v. Blevins* (1994) 9 Cal.4th 47, and argue that the court erred in failing to instruct the jury with their special instruction numbers 7 and 8. In so arguing, they rely upon portions of *Bryant* concerning the agreed upon boundary doctrine, which does not apply here. (*Id.* at pp. 55, 59-60.) The court properly rejected appellants' special instruction numbers 7 and 8.

We reject appellants' claim that the court erred in refusing their instructions concerning the Williamson Act and the payment of taxes on the strip, including their special instruction number 3, which provides as follows: "In 1972, [respondent's] predecessor owner entered into a binding contract with the County of San Luis Obispo regarding the payment of property taxes on its property. The Court has determined that this contract, as a matter of law, controlled the payment of property taxes on the property since that time, and that the contract expressly excluded the 40 foot strip of land which is the property disputed in this action. [¶] You may not consider any evidence of the payment of taxes on the disputed property between 1972 and the date of the filing of this action because it was expressly excluded by this contract."

The trial court properly refused appellants' special instruction number 3 because it misstates the law. It rests on the faulty premise that the Williamson Act contract rendered it legally impossible for respondent to pay any taxes attributable to the

strip. The court gave the jury a correct instruction regarding respondent's obligation to prove the payment of property taxes.

Appellants also argue that the court erred by rejecting their special instruction number 9, which states that "[t]he existence of a fence, cultivation or visible possession is not sufficient to prove the payment of property taxes in adverse possession [and that] assessors assess [respondent's] land according to [respondent's] legal description and not physical markings." We disagree. Appellant's special instruction number 9 was contrary to the evidence that the assessor included all property within the perimeter fences, including the strip, in assessing the Old Dietrich Place.

Appellants further argue that the court erred when it refused to give the jury their special instruction number 6, which states that the "law provides that a person claiming and desiring to be assessed for land may provide the assessor with a declaration, under penalty of perjury, that he or she currently has possession of the property and intends to be assessed for the property in order to perfect a claim in adverse possession." Special instruction number 6 cites Revenue and Taxation Code section 610. Appellants make a related argument that respondent never perfected its adverse possession claims by filing a Revenue and Taxation Code section 610 declaration. We reject both arguments. There is no requirement that an adverse claimant submit a Revenue and Taxation Code section 610 declaration in order to perfect an adverse possession claim.

We also reject appellants' claim that the court ignored "contrary . . . statements of the law," including those in *Bryant v. Blevins*, *supra*, 9 Cal.4th at pp. 55, 59-60, by giving the following instruction regarding actual possession: "[Respondent] may establish actual possession of 'the Strip' under a claim of right only if 'the Strip' has been (1) protected by a substantial enclosure, or (2) cultivated or improved in the usual manner. . . . [¶] To constitute a substantial enclosure, there must be a barrier surrounding the property sufficient to protect it from the intrusion by livestock or people during the five-year period."

The Court's instruction regarding actual possession correctly states the law. A party can establish actual possession under a claim of right by showing that the

land has been actually occupied and substantially enclosed. (Code Civ. Proc., §§ 324, 325; see *Mattes v. Hall* (1913) 21 Cal.App. 552, 560; *Brown v. Berman* (1962) 203 Cal.App.2d 327, 329.)

The court also instructed the jury as follows: "The requirement of 'hostility' means, not that the parties must have a dispute as to the title during the period of possession, or that there is open aggression or combat, but that [respondent's] possession must be adverse to the record owner, unaccompanied by any recognition of [appellants' owners'] rights in the property. [Respondent's] possession of the property must be under a claim of right against [appellants] during the entire five-year period. [¶] When an adverse possessor enters on land mistakenly believing that it is the land's owner, the possession is adverse unless [appellants] prove by substantial evidence that the adverse possessor (1) recognized the record owner's claim to the land and (2) expressly or impliedly showed an intent to claim the disputed land only if record title was determined in their favor."

Appellants challenge the second paragraph of the "hostility" instruction, suggest that the instruction described the law in a one-sided way, and argue that an erroneous evidentiary ruling exacerbated this claimed instructional error. The challenged second paragraph of the instruction correctly states the law.

In one short paragraph in their opening brief, appellants contend that "[t]here was clearly an irregularity in the proceeding when the jury returned a note . . . that it had reached a tentative verdict without even considering the special verdict form." However, they fail to develop an argument or cite any persuasive authority to support their contention. We treat their "failure to do so [as] a waiver of the issue on appeal." (*Berger v. California Ins. Guarantee Assoc.* (2005) 128 Cal.App.4th 989, 1007-1008.)

We have considered appellants' remaining contentions and conclude they are without merit. (See *Nasim v. Los Robles Regional Medical Center* (2008) 165 Cal.App.4th 1538, 1545.)

Respondent filed a motion seeking sanctions against appellants for filing a frivolous appeal. We deny the requested sanctions.

The judgment is affirmed. Costs are awarded to respondent.

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COFFEE, J.

We concur:

GILBERT, P.J.

PERREN, J.

Barry T. LaBarbera, Judge
Superior Court County of San Luis Obispo

William S. Walter for Defendants and Appellants.

Odgen & Fricks, Roy E. Ogden and Sue N. Carrasco, for Plaintiff and
Respondent.